

9.00.00.00 - CONDEMNATION

9.01.00.00 - EMINENT DOMAIN

9.01.01.00 **General**

Eminent domain is the inherent power of government to acquire private property for public use. The owners of such private property shall not be deprived of their property without just compensation as provided in the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution.

Condemnation is the legal proceeding by which the power of eminent domain is exercised.

The Department may condemn property to be used for highway and related purposes by authority of S&H Code Section 102. The CTC must first adopt a Resolution of Necessity pursuant to Section 1245.230 of the Code of Civil Procedure (CCP).

9.01.02.00 **Record of Condemnation Case Status**

The District Condemnation Unit, hereinafter referred to as District, maintains a record of the status of condemnation cases commencing with submittal of the Request for Resolution of Necessity to the CTC. The record is kept current through the duration of the action.

9.01.03.00 **Condemnation Process**

The condemnation process requires continuous communication among the District, Legal, and HQ RW. Respective roles and responsibilities are set out in the flowcharts in Section 9.16.00.00 at the end of this chapter. The flowcharts provide an overview of the process; the steps involved and the sequence of action may vary. In addition, the flowcharts outline actions taken by Legal that may not be discussed in this chapter.

Condemnation must be completed within a short time frame, and all eminent domain actions are subject to fast track rules that accelerate the process. (See Section 9.02.15.00.) Although timelines may

vary depending on local court rules, the typical time frame should closely follow the indicated schedule.

9.01.04.00 **Notice of Intent to Adopt Resolution of Necessity**

CCP Section 1245.235 provides that an owner must be given notice of the meeting at which the CTC will consider a Resolution of Necessity for acquisition of the owner's property (Forms RW 9-1 and RW 9-2). The District initiates condemnation by mailing a Notice of Intent to Adopt Resolution of Necessity to property owners whose property is required. The Notice must be signed by a senior level Right of Way Agent or above.

Notice requirements are shown on the table below:

NOTICE REQUIREMENTS
<ul style="list-style-type: none">• Include one of the following forms of property identification as "Exhibit A:" Condemnation Map and Legal Description, or Specific property address and appraisal map clearly showing property, or Department's Grant Deed• Send Notice and cover letter to owners listed in the last equalized county assessment roll, new owners not yet listed, lessees, and month-to-month tenants owning realty.• Serve or mail Notice and Letter no later than 45 days prior to the date of the meeting at which the CTC will consider the Request.• Personally serve or mail Notice and Letter First Class, Return Receipt Requested.

If the owner refuses service or delivery, mail Notice and Letter First Class (without Return Receipt Requested). Prepare an affidavit detailing the steps taken to provide the required notification.

If the owner(s) cannot be located with reasonable diligence and service is by publication, see Section 9.03.13.00 and CCP Section 1250.125.

If service is by publication and the owner(s) cannot be located with reasonable diligence, see Section 9.03.13.00 and CCP Section 1250.125.

9.01.05.00 Change in Notice

If either of the following occurs, the District must immediately notify the owner(s) by mail that the Request will not be considered on the date of which they were notified and that a new Notice will be provided.

- If for any reason (such as a design change) information in a Notice or legal description already provided to the owner(s) ceases to be correct prior to adoption by the CTC.
- If the District defers CTC consideration at the time set forth in the Notice.

The District must provide a new Notice and Letter, subject to all of the above requirements, before a revised resolution request may be submitted for CTC consideration.

Although a new Notice is not required if CTC consideration has been deferred at the owner's request, the District must provide written notice of the deferred date, time, and location to the owner at least 15 days in advance.

9.01.06.00 Grantor's Request for Appearance

If an owner believes that their property should not be required or that the transportation project should be realigned to avoid their property, the owner may request an appearance before the CTC regarding the Resolution of Necessity. This request must be made in writing within 15 days from mailing of the Notice.

In response to the request, the District conducts a hearing, which continues the negotiating process and assures that all issues are identified and resolved, if possible, prior to the CTC meeting.

9.01.07.00 First Level Review Hearing

The District conducts the First Level Review Hearing, which is attended by the owner(s) and representatives from District Right of Way and Project Development. It is desirable that the District Director attend and the DDC-R/W chair the hearing. The Chair reminds the owner the CTC will only consider issues of project need, project design, and the necessity of purchasing the owner's property; the CTC will not consider issues of compensation.

If after the hearing the owner decides not to appear before the CTC, the District sends a confirmation letter to the owner with a copy to HQ RW.

9.01.08.00 Second Level Review Hearing

If issues concerning the CTC remain unresolved after the First Level Review Hearing, the District prepares a Draft Appearance Information Sheet. This document includes a complete report of the First Level Hearing and is sent to the Office of Project Planning and Design (OPPD) with a request for a Second Level Review Hearing.

In response to an OPPD request for a Second Level Review Hearing, HQ RW convenes the Second Level Review Panel. The Panel consists of a chairperson and panel secretary from HQ RW, an engineer from OPPD, and an attorney from the Legal Division. Representatives from District R/W and Project Development attend the hearing but are not members of the panel.

If issues remain unresolved at the conclusion of the Second Level Review, the Panel prepares a report and recommendation to the Deputy Director Transportation Engineering (also known as the Chief Engineer) for presentation of a Resolution of Necessity to the CTC.

HQ RW prepares a package for the CTC that contains a Summary of Unresolved Issues, Condemnation Panel Report, Appearance Information Sheet, and Chronology of Contacts. HQ RW notifies the owner by certified mail of the date, time, and location of the CTC hearing, including copies of the package created for the CTC.

FIRST AND SECOND LEVEL REVIEW HEARINGS	
Responsible Party	Action
District	Sends notice to the owner of the CTC meeting at which the Resolution of Necessity will be considered.
Owner	Notifies the CTC of intent to appear at the CTC meeting to object to the Resolution of Necessity.
HQ RW	Notifies the owner that consideration of the Resolution of Necessity by the CTC will be delayed pending further investigation. (See Form RW 9-3.)
HQ RW	Asks the District to conduct a First Level Review Hearing. (See Form RW 9-4.)
District	Notifies owner of the date, time, location, and substance of First Level Review Hearing. (See Form RW 9-5.)
District	Conducts First Level Review Hearing.
District	Prepares a Draft Appearance Information Sheet and submits to OPPD. OR -- Sends a letter to the owner confirming that the owner has decided not to appear before the CTC.
OPPD	Requests HQ RW to schedule a Second Level Review Hearing.
HQ RW	Schedules Second Level Review Hearing, coordinating with panel members and the District.
District	Determines the availability of the owner and arranges for a hearing room.
HQ RW	Notifies the owner by letter of the date, time, location, and purpose of the hearing. (See Form RW 9-6.)
Panel	Conducts Second Level Review Hearing.
Panel	Prepares a report and recommendation to the Chief Engineer for a Resolution of Necessity for presentation to the CTC.
HQ RW	Prepares CTC package and notifies the owner by certified mail of the CTC hearing. (See Form RW 9-7.)

9.01.09.00 **Requesting the Resolution of Necessity**

A separate Resolution must be obtained for each ownership. An ownership may consist of more than one parcel, but no more than one ownership may be included in a Resolution, Request, or Notice.

The legal and policy requirements in the table below must be met for each ownership prior to submitting the Request to HQ RW.

9.01.10.00 **Submission of Request for Resolution**

The District should submit the Request for Resolution to HQ RW a minimum of five weeks prior to the CTC meeting to assure processing.

The CTC office semi-annually establishes dates and locations of CTC meetings. HQ RW sends this information to the districts as soon as it is available.

LEGAL AND POLICY REQUIREMENTS	
<ul style="list-style-type: none">● There must be an approved appraisal report on the property, and the amount of that appraisal must have been offered.● A reasonable number of acquisition calls must have been made on the property owner, and the owner must have been allowed a reasonable time to consider State's offer. For most properties, no less than three personal calls and 30 days would be considered reasonable.● Where improvements on the remainder or that straddle the right of way line are to be acquired, Acquisition must advise R/W Engineering of the necessity of including either the Condemnation Improvement Removal Clause (6.08.07.01) or the Condemnation Improvement Severance Clause (6.08.07.02) in the legal description.● A personal acquisition call must have been made on the owner within 30 days prior to serving or mailing the Notice. The owner(s) must have been advised that:<ul style="list-style-type: none">* The State will proceed with condemnation and will serve or mail the Notice soon.* The owner has a right to appear before the CTC to be heard on matters referred to in CCP 1240.030; the CTC may not consider issues of compensation.* The owner must file a request to appear within 15 days of service or mailing of the Notice. Otherwise, the right to appear will have been waived.● A Notice, accompanied by a cover letter (see Forms RW 9-1 and RW 9-2), must have been provided to all parties with an interest in the property.	

9.01.11.00 Preparation of Resolution

HQ RW prepares the Resolution based on information provided in the District's request package. Each package must contain the following items:

RESOLUTION REQUEST	
•	Resolution of Necessity Request (Form RW 9-8) in triplicate signed by the DDC-R/W.
•	Completed Request for Confirmation of Market Value (Exhibit 8-EX-5).
•	Completed Staff Appraisal Review Prior to Requesting a Resolution of Necessity.
•	Copies of Notice of Intent and Letter of Transmittal.
•	Original and five copies of the legal description marked "Exhibit A," which must be identical to the legal description provided to the owner with the Notice.
•	Two copies of key and detailed condemnation maps.
•	Declaration of Mailing or Affidavit of Service of Notice and Letter.

9.01.12.00 Specific Statutory Authority

See the table at the end of this section for a summary of condemnations for which specific statutory authority must be cited in the Resolution.

9.01.13.00 Adoption of Resolution

If the CTC votes to adopt the Resolution, HQ RW immediately sends a notice to the District indicating the Resolution was adopted and follows up by sending the original and two copies of the Resolution. Headquarters Legal sends a certified copy of the Resolution to the Regional Legal Office.

9.01.14.00 Rescission of Resolution

The District should request a rescission of a Resolution where it is impractical, due to design revisions or for other reasons, to pursue acquisition of a parcel based on the original resolution authorizing condemnation. This lessens State's exposure to

inverse condemnation actions under the provisions of CCP Section 1245.260.

The District initiates the rescission by submitting a request to HQ RW for CTC consideration. The request should identify the parcels and resolution numbers in the format below. If suit has been filed and subsequently dismissed, the date of dismissal should be included.

COUNTY _____	ROUTE _____	RESOLUTION OF NECESSITY NO. _____
		DATE PASSED _____
OWNER _____	PARCEL NO. _____	
REASON FOR RESCISSION _____		

9.01.15.00 Filing of Suit Within Six Months of Adoption

The District should request a Resolution only if it intends to file a suit within six months after the Resolution is adopted. CCP Section 1245.260 provides that if eminent domain is not commenced within six months, the property owner may bring an inverse condemnation action. The court could require the Department to acquire the property, allow the owner to recover damages for any interference with the possession and use of the property, or both. It is important, therefore, that the District request, file, and serve suit papers as soon as possible after a Resolution is adopted. Or, if the suit is not filed within six months, the District must request rescission of the Resolution.

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	Explanation	Requirements	Authority
Substitute	<p>Whenever the Department requires property for highway purposes and the property is devoted to, or held for, another public use for which the power of eminent domain might be exercised, the Department may condemn substitute property to be exchanged for the required right of way if the owner of the required right of way consents in writing to the exchange.</p> <p>When the Department acquires substitute property in its own name, relocates the public use, and then conveys the improved property to the owner of the required right of way, the Department is acting under CCP 1240.330. The Department must follow this procedure when either a court order, a judgment in eminent domain proceeding, or a written agreement requires the acquisition of substitute property that will be devoted to the displaced public use.</p> <p>If the owner of the required right of way does not have the power to condemn substitute property, the Department must rely on either CCP 1240.330 or 1240.350. (See Form RW 9-10.)</p> <p>If the Department is condemning property pursuant to CCP 1240.350 to provide utility service to, or access to a public road from, property that is not acquired for public use but that is cut off from utility service or public road access as a result of the Department's acquisition, the owner's consent is desirable, but not a prerequisite. However, the Department must take into consideration the cost and hardship to the owner whose property is to be condemned or acquired to provide the utility service or access.</p>	<p>It is necessary to set forth:</p> <ul style="list-style-type: none"> ● Date and terms of the agreement between the Department and the other party. ● Degree of title owned by the other party. ● Degree of title the Department will condemn for exchange purposes. <p>In addition, the map forwarded with the Resolution Request shall delineate the right of way the Department will acquire from the other party.</p> <p>The Resolution shall specifically reference CCP 1240.320. (See Form RW 9-9.)</p> <p>The Resolution shall include a statement that the property is necessary for the purpose specified in CCP 1240.330, if applicable.</p> <p>When the Department acquires rights for a utility company, care should be exercised to ensure the legal description includes all rights, restrictions, and limitations required by the company. As a general rule, the legal description should not provide for acquisition of greater rights than the utility company holds in its present right of way. However, special circumstances may dictate otherwise. For example, the PUC may impose higher standards on replacement construction. If the Regional Legal Office wants to amend the utility company's legal description for the Resolution, the Regional Legal Office and utility company should confer and agree upon the change.</p>	<p>S&H Code 104(b) CCP 1240.320 CCP 1240.330 CCP 1240.350</p>

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	Explanation	Requirements	Authority
Of Excess Land	If the Department proposes to condemn property that is excess to its needs, the property is classified as either a remnant or excess. (Condemnation of a remnant is discussed below.) The Department may acquire property as excess when the remainder or a portion of the remainder will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages.	Section 1240.150 provides broad authorization for the Department to acquire remainders by a voluntary transaction or a condemnation action initiated with the owner's consent. If acquisition of only a portion of a property would leave the remaining portion in such shape or condition as to constitute an uneconomic remnant, the Department shall offer to acquire the entire property and may do so if the owner agrees. Since exercise of authority under this CCP section depends upon consent and concurrence of the owner, the language is broadly drawn to authorize acquisition whenever the remainder would have little or no value to its owner rather than little market value.	Acquisition by any means is authorized under CCP 1240.150 when owner expressly consents.
	If the property is needed for public use and a structure is located partly on the property to be acquired and partly on other property, the Department may acquire the entire structure by agreement with the owner or by condemnation initiated with the owner's consent.	There are a number of alternatives available to the parties that may be less costly or more convenient than taking only part of the structure and paying severance damages on this basis. In some cases, severance may so destroy a structure that total demolition in one operation is the only economically or practically feasible alternative. The parties may also agree that the Department will purchase the structure and relocate it.	CCP 1240.150 For authority to condemn the structure where the parties cannot agree, see CCP 1263.270 (court order to acquire entire improvement). For other possibilities, see CCP 1263.610 (Department to relocate structure or perform other work for owner).
For Compatible Use	The Department may acquire property appropriated to public use if the proposed use will not unreasonably interfere with or impair the existing public use or future public use that can be reasonably expected.	The Resolution must specifically reference CCP section.	CCP 1240.510

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	Explanation	Requirements	Authority
For More Necessary Public Use	<p>The Department may acquire property appropriated to a public use if the Department's use is a more necessary public use.</p> <p>The Department's authority under this CCP section will not prevent continuance of the appropriated use if such use will not unreasonably interfere with, impair, or require a significant alteration of the Department's project (see CCP section 1240.630).</p>	<p>A Letter of Consent should be obtained. If not, the Department must be able to prove to the Court that its use is a more necessary public use than the use to which the property is appropriated.</p> <p>A statement as to the more necessary public use is required.</p> <p>The Resolution must specifically reference CCP section.</p>	CCP 1240.610
For Future Use	<p>The Department may condemn property for future use only if there is a reasonable probability that its date of use will be within seven years from the date the Complaint is filed or within such longer period as is reasonable. The date of use is the date the property is actually devoted to the use or project construction is commenced (i.e. the date the contract is awarded).</p>	<p>All projects, except Federal Advance Acquisition Fund projects and those requiring reasonably longer periods should be commenced within the seven-year period. The Resolution and Complaint must reference CCP 1240.220 and give estimated date of use.</p> <p>If the project will be awarded within such longer period as is reasonable, and not within the seven years, the Resolution and Complaint must state that the acquisition is pursuant to Federal Highway Act of 1973 and give the estimated date of use.</p>	CCP 1240.210 through 1240.250.
Of an Easement to Remove Improvements	See Manual Section 6.08.07.01, CCP section 1263.270, and Form RW 9-12.	The legal description shall include the Condemnation Improvement Removal Clause.	CCP 1263.270
Of an Easement to Sever Improvements at or near the Right of Way Line	See Manual Section 6.08.07.02.	The legal description shall include the Condemnation Improvement Severance Clause.	CCP 1263.610

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	Explanation	Requirements	Authority
Of Remnants	<p>The Department may acquire property as a remnant when it would be left in such size, shape, or condition as to be of little market value. Owners may prevent condemnation if they prove the Department has reasonable, practicable, and economically sound means to prevent the property from becoming a remnant.</p> <p>A taking of excess property is not authorized to:</p> <ul style="list-style-type: none"> ● Avoid the cost and inconvenience of litigating the issue of damages. ● Preclude payment of damages, including substantial amounts in appropriate cases. ● Coerce the owner to accept whatever price the Department offers for the property actually needed. ● Afford the Department an opportunity to recoup damages or unrecognized benefits by speculating on the future market for the excess property. (See Form RW 9-11.) 	<p>Facts establishing the applicability of reasonable, practicable, and economically sound criteria should be specifically stated. Even where these criteria apply and consent of owner is not a condition precedent to the taking, the Department is required to seek such consent. The Regional Legal Office and District Right of Way should confer on any proposal to condemn a remnant.</p> <p>The request shall contain the following information:</p> <ul style="list-style-type: none"> ● Area and value of the right of way including improvements. ● Area and value of the excess or remnant before acquisition. ● Value of the excess or remnant after acquisition. ● Amount of damages in excess of benefits if not acquired. ● Discussion of any new easements proposed for the excess land in the "after" condition ● Reasons why there are not reasonable, practicable, and economically sound means to prevent the property from becoming a remnant. ● Owner's opinion or reasons for refusing consent to acquisition. 	CCP 1240.410

NOTES: